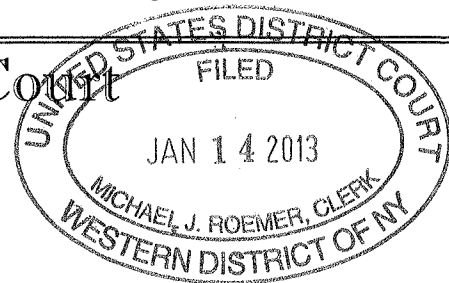


United States District Court

for the
Western District of New York

United States of America

v.

VERNON M. LOHAN

Defendant

Case No. 13- M - 201

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

Between on or about September of 2011 and June of 2012, in the Western District of New York and elsewhere, the defendant did make telephone calls and utilize a telecommunications device, in interstate and foreign communications, without disclosing his identity and with intent to annoy, abuse, threaten, and harass any person at the called number and who received the communications in violation of Title 47, United States Code, Section 223(a)(1)(C).

This criminal complaint is based on these facts:

☒ Continued on the attached sheet.

Complainant's signature

MICHAEL DOMBEK, Special Agent, HSI

Printed name and title

Sworn to before me and signed in my presence.

Date: January 14, 2013 *3:40 PM*

Judge's signature

City and State: Buffalo, New York

HUGH B. SCOTT

United States Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

Michael Dombek, being duly sworn, deposes and states:

1. I am employed as a Special Agent with United States Department of Homeland Security, Homeland Security Investigations (HSI). I have been a Special Agent employed by HSI, and its predecessor, the United States Customs Service, for approximately nine (9) years, and I currently am assigned to the Buffalo Field Office.

2. As part of my duties, I have investigated offenses within the jurisdictional authority of HSI, including crimes related to narcotics smuggling, money laundering, immigration fraud, and assaults against CBP Officers. I have been involved in an investigation concerning violations of Title 47, United States Code, Section 223, as discussed in greater detail below.

3. I make this affidavit in support of a criminal complaint charging Vernon Michael LOHAN, a.k.a. Vernon Michael EVANS, of Buffalo, New York, with making telephone

calls and utilizing a telecommunications device, in interstate and foreign communications, without disclosing his identity and with intent to annoy, abuse, threaten, and harass any person at the called number and who received the communications in violation of Title 47, United States Code, Section 223(a)(1)(C). The information in this affidavit is based upon my personal knowledge of the facts contained herein, conversations with officers of the Peel Regional Police Department, and an examination of various documents and records involving this investigation. This affidavit is submitted for the limited purpose of securing a criminal complaint and, as such, I have not included details of all aspects of this investigation. I have set forth the facts that I believe are necessary to establish probable cause to believe that Vernon LOHAN did violate Title 47, United States Code, Section 223(a)(1)(C).

4. On September 25, 2010, Peel Regional Police Constables received a warrant for the arrest of Vernon Michael EVANS. The warrant issued was for charges of Criminal Harassment and Impersonating a Peace Officer. Charges against EVANS were initiated due to repeated harassing and threatening phone calls and emails to Peel Regional Police and City of Mississauga, Ontario employees.

5. On May 30, 2011 and June 17, 2011, Vernon Michael EVANS pled guilty to Criminal Harassment and Mischief in the Ontario Court of Justice, Central South Region. EVANS, a U.S. citizen and resident of Buffalo, New York, received a sentence of three (3) years probation, with conditions to not contact officials from Peel Police or the City of Mississauga, and to not return to Canada for a period of three (3) years.

6. On September 23, 2011, Hazel McCallion, the Mayor for the City of Mississauga, Ontario Canada, contacted the Peel Regional Police Department indicating that she had been receiving hang up type phone calls at her home residence for approximately three weeks. Mayor McCallion stated to Peel Regional Police that the caller did not say anything, nor were there any sounds in the background.

7. On October 28, 2011, Mayor McCallion reported to Peel Police that she received four (4) more calls from an anonymous caller at her residence at 1:04 a.m., 1:11 a.m., 2:10 a.m. and 3:00 a.m. On November 6, 2011, Mayor McCallion received additional calls at 4:35 p.m. and 4:40 p.m. Both were from an anonymous number and both times the

caller hung up without saying anything. Mayor McCallion used the *57 Call Trace Security feature and a recorded message told her to contact police. The Call Trace Security feature allows police, through the use of a court-appointed production order, to determine the number placing the anonymous calls.

8. Mayor McCallion reported to Peel Police that she received further anonymous calls at her residence with hang ups on November 15, 16, 28, 29, 30, and December 4 and 17. On the morning of December 17, 2011, Mayor McCallion reported receiving 10 calls from approximately 5:00 a.m. to 6:00 a.m. Mayor McCallion stated to police that she used the Call Trace Feature to capture the first call, which was 716-715-7547, and she hung up on the rest. Mayor McCallion stated to Peel Police that the calls are harassing and disruptive and that she can't unplug her phone because it will disable her residence security system.

9. During this time frame, the Mayor's Office and Sergeant Raj Biring of the Peel Regional Police Department were also receiving anonymous calls. On October 31, 2011 Sergeant Biring reported receiving three anonymous phone calls from a male who would play something inaudible and

hang up. A fourth call was received from the number 716-715-7547 with the same inaudible noise. Several calls were also received at the Mayor's Office. Three (3) calls displayed anonymous, while the fourth displayed the number of 716-715-7547. Sergeant Biring had been involved with the initial case against EVANS in 2010 and remembered that the 716-715-7547 had been associated with EVANS. Peel Regional Police provided correspondence between Vernon EVANS and the Crown Attorney in St. Catherines, Ontario. The correspondence was in relation to EVANS's plea agreement for the initial charges of harassment. EVANS signed off in the letter as Vernon M. EVANS, date of birth October 7, 1986, with a contact number of 716-715-7547. Subsequent to the calls on October 31, 2011, Sergeant Biring received information indicating that EVANS had legally changed his name to Vernon Michael LOHAN but that he also goes by Vernon EVANS, Vernon LOHAN, Michael EVANS and Michael LOHAN. Sergeant Biring also received information that LOHAN had recently traveled to Canada despite his probation order. Peel Regional Police further received a copy of a New York State Enhanced Driver's License, issued on April 14, 2011, in the name of Vernon Michael LOHAN at 383 Military Road, Buffalo, NY 14207.

10. On November 9, 2011 Peel Regional Police Constable Adams applied for a Production Order in the Ontario Court of Justice for detailed information on numbers captured by telephone number (905)826-7116, registered to Hazel McCallion at her home residence, using Bell Canada's Call Trace Security feature. The order was granted, and results received indicated that the number captured on November 6, 15, 16 28, 29, 30 and December 4, 2011 was 716-715-7547.

11. Homeland Security Investigations (HSI) SAC/Buffalo was contacted by the Peel Regional Police and was requested to assist in the investigation. On November 4, 2011 and January 1, 2012, I issued a Department of Homeland Security Summons for the production of subscriber information and toll records related to cell number 716-715-7547. The time periods of the Summons were from September 1, 2011 through November 4, 2011 and November 5, 2011 through January 12, 2012, respectively.

12. Information received from Cricket Communications in response to the aforementioned Summons indicates that cell phone number 716-715-7547 is assigned to Vernon LOHAN at 383 Military Road, Buffalo, NY. Cell phone toll records

were provided for 716-715-7547 for a time frame of September 1, 2011 through December 29, 2011.

13. Tolls results provided by Cricket Communications indicated that from September 1, 2011 through December 29, 2011 cell number 716-715-7547 contacted 905-826-7116, the home residence of Mayor Hazel McCallion, on 376 occasions. Cell number 716-715-7547 also contacted 905-896-5555, the Mayor's Office, on 432 occasions over the same time period. On September 23, 2011 cell number 716-715-7548 made three (3) calls to 905-826-7116 - the mayor's residence. On October 28, 2011 sixty-five (65) calls were made to the mayor's residence. On November 6, 2011 nine (9) calls were made to the mayor's residence. On November 15, 2011 thirteen (13) calls were made. On November 16, 2011 one (1) call was made. On November 28, 2011 (2) calls were made. On November 29, 2011 one (1) call was made. On November 30, 2011 three (3) calls were made. On December 4, 2011 eighteen (18) calls were made. On December 17, 2011 ten (10) calls were made, all to the mayor's residence. This listing is not all inclusive and only includes the days reported to the Peel Regional Police. Further analysis of the tolls indicates that on December 25, 2011 cell number 716-715-7547 contacted 905-826-7116,

the mayor's residence, on twenty (20) occasions from 3:52 a.m. until 5:56 a.m. One call that occurred at approximately 4:21 a.m., had a duration of three (3) minutes and fourteen (14) seconds. Mayor McCallion reported to Peel Regional Police that during the call, music was played, specifically the song Um Bop by the group Hansen. All of the calls placed to Mayor McCallion, over the timeframe of September 1, 2011 through December 29, 2011, by cell number 716-715-7547 were placed using the Cricket Communications *67 Initiated Calling ID Block feature, which allows the caller to block their number to the recipient.

14. After a short cessation, the anonymous calls have continued to the office of Mayor McCallion. Homeland Security Investigations SAC/Buffalo has received information from LOHAN's landlord that Vernon LOHAN acquired a new cell phone number of 716-218-5777. A Homeland Security Investigations Summons was issued on April 17, 2012 for subscriber and toll data related to 716-218-5777 for the time period of March 1, 2012 through April 17, 2012.

15. Information received from Neustar Legal Compliance in response to the aforementioned Summons indicates that cell phone number 716-218-5777 is assigned to Vernon LOHAN at 383 Military Road, Buffalo, NY. Neustar is a designated agent of Cricket Communications authorized to respond to subpoenas, search warrants, and court orders for the production of customer and call detail records. Cell phone toll records were provided for 716-218-5777 for a time frame of March 1, 2012 through April 17, 2012.

16. Toll records indicate that on April 10, 2012, cell number 716-218-5777 placed (7) seven calls to 905-896-5555, the Mayor of Mississauga's Office, from 8:21 a.m. through 8:48 a.m.

17. On May 25, 2012 Peel Regional Police advised that the harassing calls had continued to the Mayor's Office and that the volume of calls was adversely affecting the Office's ability to operate. The Administrative Assistant to Mayor McCallion advised that the office had received approximately 36 calls from an unknown number and from 716-218-5777 on May 23, 2012. On May 24, 2012 the Mayor's Office received approximately 92 calls from an unknown number and from 716-218-5777. On May 25, 2012 the Mayor's


Office received approximately 20 calls from an unknown number and from 716-218-5777.

18. On May 30, 2012 a Court Order was issued by the Honorable H. Kenneth Schroeder, United States Magistrate Judge for the Western District of New York, directing Cricket Communications to provide subscriber information and historical cell site location information for cellular telephone number 716-715-7547 for the time period of September 1, 2011 to December 29, 2011. Results from the Court Order, provided by Neustar Legal Compliance, indicate that the calls placed to Mayor McCallion's home phone from cell number 716-715-7547 occurring on November 6, 15, 16, 28, 29, 30 and December 4 and 25, 2011 originated in Buffalo, NY. Neustar data indicates that the calls originated from cell tower BU03XC008-04 with coordinates of 42.94322003 latitude and -78.87434004 longitude. Internet searches indicate that the cell tower associated with these coordinates is located at or near 177 Great Arrow Avenue Buffalo, NY 14207, which is less than one mile from Vernon LOHAN's current residence at 24 Marion Street, Buffalo, New York 14207.

19. On June 5, 2012 the Administrative Assistant to Mayor McCallion reported that the office had received approximately 70 calls that day from an unknown number and from 716-218-5777. The calls began at approximately 8:30 a.m. and continued to approximately 1:55 p.m. Mayor McCallion's Administrative Assistant reported that the caller has become vulgar and inappropriate. Upon answering the calls, the Administrative Assistant hears either background noise or comments. Some comments reported include, "whore, are you there, stupid slut scumbag" and "suck my dick".

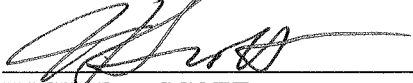
20. Wherefore, based on the foregoing, I respectfully submit that probable cause exists to believe that from September of 2011 through June of 2012, in the Western District of New York and elsewhere, Vernon Michael LOHAN, a.k.a. Vernon Michael EVANS, did make telephone calls and utilize a telecommunications device, in interstate and foreign communications, without disclosing his identity and with intent to annoy, abuse, threaten, and harass any person at the called number and who received the

communications in violation of Title 47, United States
Code, Section 223(a)(1)(C).



Michael Dombek
Special Agent
Homeland Security Investigations

Sworn and subscribed to
before me this 14th day
of January, 2013.

 3:00 pm

HUGH B. SCOTT
United States Magistrate Judge